DOCUMENT RESUME

ED 177 965 HE 011 827

TITLE Family Contribution Schedule for the Basic Educational Opportunity Grant Program, 1979. Hearing Before the Subcommittee on Education, Arts and Humanities of the Committee on Labor and Human Resources, United States Senate, Ninety-Sixth Congress (April 6, 1979).

INSTITUTION Congress of the U.S., Washington, D.C. Senate Committee on Human Resources.

PUB DATE 6 Apr 79

NOTE 50p.; Not available in paper copy due to small print and light type of original

AVAILABLE FROM Superintendent of Documents, Government Printing Office, Washington, DC 20402

EDRS PRICE MF01/PC02 Plus Postage.

DESCRIPTORS Access to Education; College Students; Educational Finance; *Educational Legislation; *Eligibility; Family Income; *Federal Aid; *Federal Legislation; Financial Support; Government Role; Grants; Higher Education; *Parental Financial Contribution; *Student Financial Aid

IDENTIFIERS *Basic Educational Opportunity Grant; Position Papers

ABSTRACT

The text of a hearing before the Senate Subcommittee on Education, Arts and Humanities is presented in which the family contribution schedule for the Basic Educational Opportunity Grant (BEOG) Program for 1979 was discussed. A letter from Joseph Califano, Secretary of Health, Education and Welfare, states that implementation of the BEOG program will be possible in the 1979-80 academic year (resulting in increased entitlement for at least 600,000 students and eligibility for an additional 60,000). Texts of statements by Joel Packer, Legislative Director of the United States Student Association; the National Association of Student Financial Aid Administrators; the National Association of Independent Colleges and Universities; and testimony presented by Jerold Roschwalb, Director, Office of Governmental Relations/Higher Education of the National Association of State Universities and Land-Grant Colleges are included. (PHR)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED177965

IHE

FAMILY CONTRIBUTION SCHEDULE FOR THE BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAM, 1979

HEARING

BEFORE THE

SUBCOMMITTEE ON EDUCATION, ARTS AND HUMANITIES

OF THE

COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

EXAMINATION OF THE FAMILY CONTRIBUTION SCHEDULE FOR THE BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAM FOR USE IN ACADEMIC YEAR 1980-81

APRIL 6, 1979

Printed for the use of the Committee on Labor and Human Resources

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

HE011827

U.S. GOVERNMENT PRINTING OFFICE
47-552 O WASHINGTON : 1979

COMMITTEE ON LABOR AND HUMAN RESOURCES

HARRISON A. WILLIAMS, JR., New Jersey, *Chairman*

JENNINGS RANDOLPH, West Virginia
CLAIBORNE PELL, Rhode Island
EDWARD M. KENNEDY, Massachusetts
GAYLORD NELSON, Wisconsin
THOMAS F. EAGLETON, Missouri
ALAN CRANSTON, California
DONALD W. RIEGLE, JR., Michigan
HOWARD M. METZENBAUM, Ohio

RICHARD S. SCHWEIKER, Pennsylvania
JACOB K. JAVITS, New York
ROBERT T. STAFFORD, Vermont
ORRIN G. HATCH, Utah
WILLIAM L. ARMSTRONG, Colorado
GORDON J. HUMPHREY, New Hampshire

STEPHEN J. PARADISE, *General Counsel and Staff Director*
MARJORIE M. WHITTAKER, *Chief Clerk*
DAVID A. WINSTON, *Minority Staff Director*

SUBCOMMITTEE ON EDUCATION, ARTS AND HUMANITIES

CLAIBORNE PELL, Rhode Island, Chairman

HARRISON A. WILLIAMS, JR., New Jersey
JENNINGS RANDOLPH, West Virginia
EDWARD M. KENNEDY, Massachusetts
THOMAS F. EAGLETON, Missouri

ROBERT T. STAFFORD, Vermont
RICHARD S. SCHWEIKER, Pennsylvania
JACOB K. JAVITS, New York

JEAN S. FROHLICHER, *Counsel*
SVEN GROENNINGS, *Minority Professional Staff*

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

FRIDAY, APRIL 6, 1979

Page

Boyer, Ernest, Commissioner of Education, Office of Education, Department of Health, Education, and Welfare, accompanied by Leo Kornfeld 4

STATEMENTS

Boyer, Ernest, Commissioner of Education, Office of Education, Department of Health, Education, and Welfare, accompained by Leo Kornfeld 4

National Association of Independent Colleges and Universities, Dr. John D. Phillips, president, prepared statement 25

National Association of State Universities and Land-Grant Colleges, Jerold Roschwalb, director of governmental relations, prepared statement (with attachment) 30

National Association of Student Financial Aid Administrators, Dr. Dallas Martin, executive director, prepared statement 18

United States Student Association, Joel Packer, legislative director, prepared statement 7

ADDITIONAL MATERIAL

Communications to:

Pell, Hon. Claiborne, a U.S. Senator from the State of Rhode Island, from Joseph A. Califano, April 5, 1979 3

FAMILY CONTRIBUTION SCHEDULE FOR THE BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAM, 1979

FRIDAY, APRIL 6, 1979

U.S. SENATE,
SUBCOMMITTEE ON EDUCATION, ARTS AND HUMANITIES
OF THE COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C.

The subcommittee met at 10:02 a.m., pursuant to notice, in room 4232, Dirksen Senate Office Building, Senator Claiborne Pell (chairman of the subcommittee) presiding.

OPENING STATEMENT OF SENATOR PELL

Senator PELL. The Subcommittee on Education, Arts and Humanities will come to order.

When I originally scheduled this hearing, the general belief was that a major provision of the middle-Income Student Assistance Act was not going to be implemented by the administration. This hearing was scheduled so that we could restate, once more, the commitment the supporters of the middle-income bill thought they had made, and to see if we could persuade the administration to fully honor this commitment.

I am happy and delighted we have not had to do this. I have received a letter from Secretary Califano indicating that all of the provisions of the middle-income bill will be fully implemented this coming academic year.

Secretary Califano's letter is an important document, for it is a clear example of our Government keeping its word. All of us involve in the enactment of the middle-income bill did so with the expectation that all of its provisions would be supported by the administration. Secretary Califano's letter clearly fulfills these expectations.

When I received that letter yesterday, I considered canceling this hearing. However, I decided not to do this for several reasons.

First, we wanted to commend the higher education community for its work in bringing this moment about. Many of you here today worked tirelessly to see that the middle-income bill would be fully implemented, and without your efforts that full implementation might not have been realized.

Also, I want to commend Commissioner Bover, Deputy Commissioner Kornfeld, and Secretary Califano for the battles they have successfully waged. I think we have all heard stories of the budget confrontations that take place in the New Executive Office Build-

(1)

ing. The Secretary and the Commissioner must be experienced infighters, for they have accomplished a victory that last week seemed far from being won.

And finally, I want to commend the 700,000 students who will be the direct beneficiaries of today's action. Since the inception of the basic grant program, the independent student has not been dealt with fairly. Yet those students were patient in making their case known to us. They never gave up, and today their efforts have borne fruit.

Today, independent students begin to get a fair shake in the process, and that is something we can all be proud of.

We will put in the record at this point the correspondence from Secretary Califano.

[The letter referred to follows:]

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D.C. 20201

APR 5 1979

The Honorable Claiborne Pell
United States Senate
Washington, D. C. 20510

Dear Clai:

Thank you for your letter regarding funding for the independent student provisions of the Basic Education Opportunity Grant (BEOG) program as provided for in the Middle Income Student Assistance Act. I am pleased to be able to announce that the Administration will support the implementation of these provisions in FY 1979.

As you know, we shared your concerns about equitable treatment of independent students. The Administration recommended and strongly supported these liberalizations. Our decision, at the time that the FY 1980 budget was submitted to the Congress, was to delay the implementation of liberalizations for independent students until FY 1980. This decision was based on the need for fiscal restraint with respect to FY 1980 outlays.

However, since the budget was submitted last January, additional savings for this year have been achieved in the Basic Grants program as the result of our efforts to reduce fraud and abuse. Consequently it will be possible to fund the independent student provisions without increasing the outlay or budget authority estimates contained in the President's Budget for fiscal years 1979 and 1980.

As you point out in your letter, amounts carried over from the FY 1978 BEOG appropriations could be made available to fund these provisions in FY 1979. Congressional action, however, will be required to waive the restriction that limits the carryover to 15% of the amount appropriated. It will also be necessary to authorize use of these carryover funds for this purpose rather than to bring the level of awards to current BEOG recipients up to the full authorized level.

Such Congressional action will also have to supersede a provision contained in the FY 1979 Appropriations Act which requires basic grant awards to be made consistent with the independent student provisions in effect prior to enactment of the Middle Income Student Assistance Act. Finally, the Family Contribution Schedule that we recently transmitted to the Congress for review will have to be revised to reflect implementation of the independent student provisions.

We believe these changes can be made promptly, and we will move as fast as we can to submit the necessary legislative proposals to the Congress at the earliest possible date.

Sincerely,

Joseph A. Califano

Senator PELL. Commissioner Boyer, welcome. We are delighted you are here.

STATEMENT OF ERNEST BOYER, COMMISSIONER OF EDUCATION, OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, ACCOMPANIED BY LEO KORNFELD

Commissioner BOYER. Thank you, Senator Pell and Senator Javits.

I am pleased to be here to acknowledge the letter that has been delivered to you from Secretary Califano. I wish also to make it a matter of record that from the very first I have considered our current practice of funding for independent students to be absolutely inappropriate.

It reflected great inequity. Indeed, it reflected a definition of the student that has long since passed.

During the past years a large number of actual students that come to the campus are older and often have family obligations. And for us to impose on them an additional burden in which they are penalized for having even minimal assets, and even curiously penalized if a child of theirs has assets, is an error in our practice that needs to be corrected.

It is for that reason that the administration, as part of this middle-income bill, last year called for a correction so that we would have a fairer treatment for the independent student. It was for that reason that it was considered favorably by your committee; and for that reason that Congress finally adopted it into law.

It is true that in the preparation of our fiscal package there was at least a short-term determination that the funding of that provision would not occur until 1980.

I am personally delighted that it is now possible for us to move immediately and promptly to implement what is already long overdue.

I am especially pleased that this will include, as you say, increased entitlement for over 600,000 existing students who are receiving aid as independent students. At least that many, and possibly 700,000.

And we calculate that an additional 60,000 students will become eligible because of this improvement.

I should make it very clear that in my judgment this is legally and morally the right thing to do.

May I, Mr. Chairman, conclude my very brief remarks by, first of all, noting that we have made provisions in the processing of grant applications so that it will be possible for us immediately, based on the computer efforts we have made, to advise the institutions that independent students can now be reimbursed on the more liberal schedules.

Second, I want to thank you and this committee for your pursuit of this issue, which was absolutely correct. And I think it demonstrates government can work if people who care about the issue remain open and persistent.

And I thank you very much for your leadership.

Senator PELL. Thank you very much, Commissioner.

You mentioned one problem, and that is the question of notification to students. Many students have already been notified that they will not be eligible for the 1979–80 academic year.

But through the decision today, many will be eligible. What steps will you be taking to tell those students they are now eligible?

Commissioner BOYER. First, we did make a double entry in calculating eligibility on the old and new formulas, just in case the process worked.

Leo advises me that, in early May we intend to send out a revised notification on this, which we think will be adequate advance notification so the students will, in fact, be reimbursed on a more liberal schedule.

Senator PELL. In other words, every student will be notified that he is now eligible, and will be sent some communication from the Government to the effect he is now eligible?

Commissioner BOYER. That is precisely our intention, with a letter that would so indicate.

In light of the administration policy, this now becomes the new level of reimbursement, and we expect to do that promptly. We intended to move with all deliberate speed to see that we implement what is, in fact, our intention now.

Senator PELL. I am delighted.

Will this involve a supplementary appropriation?

Commissioner BOYER. No, it will not. As a matter of fact, as you know, one of the debates in our corridors had to do with the amount of carryover funds. And the estimates now are that that may be as high as $700 million, based on our improved management and the estimates made earlier as to the number of students eligible.

So we have this fiscal matter, I think, well in hand. And it was one of the arguments that was persuasive.

Senator JAVITS. There would be legislation required?

Commissioner BOYER. There will be some changes required, I believe, including a modification of the 15-percent limit on car-

ryover funds. I believe there will have to be certain technical changes in the law in order to accommodate this decision.

Senator JAVITS. And the letter says that the Secretary will submit legislation.

Commissioner BOYER. That is true, Senator. That has to do with accommodating certain technicalities, so we have use of the available funds for this purpose.

Senator JAVITS. I would like to say, too, I think our Chairman Pell has done a marvelous job, and it is a great privilege to support him in that. And I will certainly support him in this legislation, and congratulate the Department in the way this matter has been handled.

Senator PELL. I thank my colleague from New York.

Is there any way the higher education community can assist you in passing the word?

Commissioner BOYER. First, I can say that their capacity to get the word out as to the doings in Washington is remarkable.

But I think the general report will get out very promptly. Leo advises me that we are sending letters to the student financial aid officers, and so they won't be surprised when students are reporting in their eligibility.

Senator PELL. I thank you very, very much for coming with us today.

There is one extraneous thought I wanted to discuss with you and get on the record. That is this question of the problems of collecting from students who have had student loans.

I know there have been informal discussions about turning in the names of student loan defaulters to the credit rating system. I was wondering what progress had been made in that regard.

My own view is that if the credit card people were made aware of loan default information, it would help the whole process.

Everybody seems to live on a credit card economy today and if they know they will not be able to get a credit card without paying back their student loan, or that they would be in danger of losing their credit card, I think we would find student loans being repaid.

Mr. KORNFELD. As you know, GAO has made a recommendation that we look into the whole problem. We are having our general counsel look into the Privacy Act issues, and other such issues that this presents to us.

Senator PELL. I would think it would save the Government a good deal of money in collecting them, because you would be dealing with the private sector in doing it.

Before we close, I appreciate very much those members of the higher education community who are here, and the record will be kept open for any statements that are inserted.

Once again, I thank the administration for being here. I didn't want to inconvenience them, but wanted to thank them personally for the decision that is being made.

Commissioner BOYER. It is a pleasure. Thank you, Senator.

Senator PELL. At this point I order printed all statements of those who could not attend and other pertinent material submitted for the record.

[The material referred to follows:]

United States Student Association

The Merger of the U.S. National Student Association and the National Student Lobby

STATEMENT OF

JOEL PACKER
LEGISLATIVE DIRECTOR
USSA

BEFORE THE SENATE
SUBCOMMITTEE ON EDUCATION, ARTS AND HUMANITIES

THE 1979-80 FAMILY CONTRIBUTION SCHEDULE
for the

BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAM

APRIL 6, 1979

ROOM 4232
DIRKSEN SENATE OFFICE BUILDING

ALSO PRESENTED ON BEHALF OF

THE COALITION OF INDEPENDENT COLLEGE
AND UNIVERSITY STUDENTS (COPUS)

Suite 300 1028 Connecticut Avenue, N.W. Washington, D.C. 20036 (202) 667-6000

Mr. Chairman and members of the Subcommittee, I would like to thank you for the opportunity to be here today. Actually, I would much prefer that this hearing did not have to occur, but unfortunately the Administration insists on ignoring the law. I am here today on behalf of the United States Student Association (USSA), which is the oldest and largest national student organization, representing almost three million college students through our 350 member campus student governments.

Let me state at the offset that USSA supports the resolution of disapproval of HEW's Family Contribution Schedule. We are shocked and appalled that the Administration has callously decided to deny 60,000 low-income independent students the money they are entitled to by law. This decision is even more upsetting by the Administration's bungled attempts to rationalize the delay in implementating the provisions of the Middle Income Student Assistance Act (MISAA). Compound this with the fact that these improvements were included in the Administration's own bill, and the situation becomes even more mind-boggling!

The problems that independent students face in financing their education is not something which has just been discovered. Indeeed there has been testimony presented many times to Congress and many statements made by the Administration that recognized the need for improving the inequitable situation faced by these independent students. In hearings held before this Subcommittee on September 12, 1977, Representative Richardson Preyer said,

> " I am particularly concerned with the BEOG Program as it affects the independent student. My interest in this matter stems from the experiences of constituents who, though barely self-sufficient, have been denied the BEOG. I presume this has occurred on the premise that the majority of the income of independent students should be going towards their education. However, it seems to me that before one can consider education, he or she must account for

> the basics of survival, such as food, clothing, and shelter. Understandably, there is little money left over to support college costs, and as day-to-day costs continue to rise, self-sufficiency becomes more and more improbable... I have seen where this approach inadvertently discriminates against many independents."1

The National Association of Student Financial Aid Administrators (NASFAA) at this same hearing stated, in discussing the treatment of assets for independent students with dependents, "... the current procedure certainly imposes an unrealistic expectation upon the single self-supporting student who has dependents."[2]

In the record of this same hearing, Commissioner of Education Boyer, in a letter to Representative Ford said,

> "The Office of Education recognizes, however, that there are some serious problems of equity in the case of independent students. The Office of Education would like to emphasize the fact that additional consideration is being given to the problem of independents including the married student, and that we hope to present a more equitable proposal to the Congress by next March."3

OE indeed did give additional consideration to these problems. USSA has obtained a copy of an internal memorandum from the Acting Director, Division of Policy and Program Development, Bureau of Student Financial Assistance (BSFA) to the Commissioner, dated Dec. 14, 1977.[4] This memo presents various issues that were in need of decision regarding the Family Contribution Schedule for the 1979-80 academic year. This is the schedule we are all still agonizing over. The first issue that is discussed is the treatment of assets of independent students with their own dependents. As you are well aware, the current Schedule gives these individuals no asset reserve, and sets an assessment rate of 33%. The memo states,

> "This method of assessing assets has been subject to criticism since the inception of the program specifically as it affects independent students with dependents of their own. Critics of the current procedure argue that since independent students with dependents

page two

> have essentially the same family responsibilities as the parents of dependents students, the method for assessing their assets should be equated with that applied to the assets of the dependent student's parents rather than to that for the assets of the dependent student himself. Although both the dependent student and the independent student with dependents are equally the beneficiares of their education, it is unrealistic to consider their assets equally available for liquidation to meet educational costs. To do so ignores the fact that the independent student with dependents has many additional obligations."

This fascinating memo goes on to present two options, A and B. Option A would have made no improvement in asset treatment. The only pro presented for this argument is that it would "avoid increased program costs". Option B would revise the asset treatment so that it would be the same as that used for parents of dependent students ($25,000 reserve and an assessment rate of 5 percent for assets in excess of the reserved amount.) Three pros are listed for this option as follows,

> "1. Provides more equitable treatment for independent students with dependents by recognizing their additional family responsibilities.
> 2. Implementation of this proposal provides fair means of resolving the problem of asset treatment which has existed since the inception of the Basic Grant Program.
> 3. The proposal is likely to satisfy the criticism on this subject which has been received from the financial aid community, the applicant population, and members of Congress."

The recommendation suggests that Option B be adopted as as "part of the overall effort to provide more equitable treatment of independent students..." The second issue discussed in this memo is that of the Family Size Offsets for single independent students. As you know, currently, as part of the BEOG award calculation, a Family Size Offset is included which is an allowance against income for basic subsistence costs. For families the offset used is based on 1972 Weighted Average Thresholds at the Low-Income Level published by the Bureau of the Census, updated annually to reflect changes in the Consumer Price Index. However, for

page three

single independent students, only 35 percent of the threshold for a single person is allowed. In 1972, this figure was $700, and has since been adjusted for CPI changes to $1100. The OE memo notes,

> "Since the inception of the program, there has been considerable criticism of the level of the family size offset for the single independent student. The primary argument presented is that the offset is unrealistically low and as a result eliminates a number of students from becoming eligible. In addition, the treatment of the single independent student is not consistent with the treatment of other applicants, either dependent or independent with dependents of their own, for whom the full-size low-income threshold allowance as determined by the reported family size is given. (sic)"

Once again, the memo goes on to present two options, A and B. Option A would have maintained the current procedures for computing the Family Size Offset. The only pro presented is that this "would avoid increased program costs". Option B, would revise the method so that it is consistent with that used for all other applicants (this would result in an offset of $3400, the figure included in MISAA). Two pros are listed for this option,

> "1. Implementation of this proposal provides a logical and fair means of eliminating an inequity which has existed since the inception of the program.
>
> 2. The proposal should satisfy the criticism on this issue from the financial aid community, the applicant population, and members of Congress."

One con was given for the first option, of no change,

> "The method of computing the Family Size Offset for single independent students has received more criticism than any other single item in the Family Contribution Schedules, and it is the least defensible in terms of equity. Considerable public and Congressional criticism will result if we make no attempt to remedy this inequity as part of our overall review of the treatment of the independent student, and will reflect adversely on the credibility of our study."

This internal memo shows in perfect clarity that OE did study this issue, that it did receive criticism since the inception

of the program, and that it believed that changes needed to be made to remove inequities. All this before anyone ever heard of MISAA. I could stop my statement here and still have presented a case of OE ignoring inequities and criticism. But much more than that is at stake.

The next time the independent student pops up is February 8, 1978. This is the day when the Administration held a press conference along with several members of Congress to announce the President's proposal of aid for middle-income families. A new press release which detailed the bill's features mentioned that one of the provision would "Eliminate inequities in the treatment of self-supporting students, particularly those who have dependents."[5] This exact same sentence was included in the testimony presented by Secretary Califano at a joint hearing of the Senate Committee on Human Resources and the House Education and Labor Committee on February 9, 1978.[6]

On February 23, 1979, Commissioner Boyer testified on the middle-income proposal,which at that time was HR 10854. His statement said,

> "One final point on the Basic Grants program. We are proposing to increase the income offsets for single independents from $1100 during 1978-79 to $3400 in 1979-80. This change will permit us to treat these students in the same manner as all other recipients... current procedure places the single independents at a severe disadvantage in financing their education. Our proposed change will improve considerably this situation."[7]

Let me jump over the remainder of the hearings, markups, and floor action on MISAA, except to note that at no point through the entire session did we or anyone else in the higher education community hear any concern from the Administration on including the improvements for independents as part of the legislation. We now turn to November 1, 1979. This is the day MISAA was signed by the President in a bill-signing ceremony at the White House attended by members of Congress and representatives of the entire higher education community. The President praised the bill as landmark education legislation. He did not

Give any hint that the Administration had any problems with any aspects of the legislation.

There was further proof of the Administration's commitment to the independent students when the proposed Family Contribution Schedule for 1979-80 was published in the Federal Register on August 14, 1978.[8] This Schedule included both the improvements in asset treatment for independents with dependents and the increase in the Family Size Offsets for single independents. In commenting on the asset change the proposed rule said,

> "This combination of asset treatment would preserve the concept that the independent student should contribute a greater portion of his or her resources toward postsecondary education expenses. At the same time, it recognizes that the independent student with dependents has family responsibilities which are identical to those of the parents of dependent students."

The only inkling that there may be problems took place in the conference report on the FY 79 Labor-HEW Appropriation bill. (H. Rept. No. 95-1746). The report contained a clause that said, "[The Family Contribution Schedule] shall retain the provisions relating to independent students as were in effect for the academic year 1978-79." An explanatory statement was added, "The managers emphasize that the conference agreement of BEOG's was an unusual action taken only because sufficient time was not available to address this matter in the regular legislative process." As someone present at the conference committee meetings, there is no question in my mind that the language was added because it seemed that MISAA was not going to pass and that the $2.6 billion that was appropriated would not be sufficient to both expand eligibility to middle-income students and make the improvements for independent students.

MISAA of course did pass, and its provisions would appear to supercede those of the appropriations bill. Looking at the fiscal question, the $2.6 billion turns out to be sufficient, particularly since there is carryover of $560 million from FY 78. The Administration after the session ended did not give anyone reason to believe that they would interpret this any differently. USSA, as well as all other higher education organizations, and

47-552 O - 79 - 3

members of Congress proceeded to inform our constituents of the provisions of MISAA, including the independent student improvements.

Shortly before the President's FY 80 budget was released we heard rumours that the independent student changes would not be funded. At a briefing on the budget conducted by HEW two days before the budget was officially released, it was discovered that indeed, the Administration was planning on ignoring what the statute mandated. When questioned on this, the response was, "legal problems". As the battle heated up, OE was asked for a copy of the legal opinion by the HEW general counsel which came up with these "legal problems". Interestingly, it was discovered that no such legal opinion existed, at least not in written form.

While the legal argument seemed like a good way for HEW to justify their decision, several members of Congress, including the Chair of this Subcommittee, and the Chair of the Senate Labor-HEW Appropriations Subcommittee, wrote to Secretary Califano to strongly state that the changes should be implemented "immediately", and that to do otherwise would be a violation of Congressional intent.

With the legal argument seemingly shot out from under them by the people who wrote the law and should have a good idea of what was intended, HEW has now lapsed into "fiscal restraint" as the rationale. While we are all cognizant of the fiscal problems facing our country, the Administration does not have the authority to simply not spend funds appropriated by the Congress. The Impoundment Act was specifically passed to avoid this problem. There is no question that the Administration is usurping the powers granted to Congress by the Constitution of the United States in this case.

If the Administration does not feel that these funds should be spent in FY 79, then they must submit a request for rescission or deferral to Congress to act on.

Mr. Chairman, it is astounding that the Administration persists in its illegal and immoral decision to deny students

the money they are entitled to and are expecting. The record has shown the need of these students for additional funding. The Administration's own documents point out the inequity currently in place. The President's own bill included these changes. The Administration testified several times in support of them. The proposed Family Contribution Schedule included them. The President praised the bill as compatible with his program. The Congress has appropriated sufficient funds. Key members of Congress have urged implementation. The entire higher education community has rallied in support of these provisions. Yet we are here today still looking for ways to force the Administration to do what they had promised and pledged they would do - which is to provide some simple justice to 60,000 deserving students.

USSA must urge this Subcommittee and the full Congress to adopt a resolution of disapproval. We realize the gravity of this request. Possible delays in giving students their awards may result. However, if this situation is resolved in the next two months, we do not envision any major program disruption. As the statement from NASFAA points out, OE is having two different eligibility indices printed on the Student Eligibility Report that a student receives. Thus assuming the changes are implemented all these students will not have to have their applications reprocessed. The financial aid officer would simply use the higher figure in determining the actual award.

On behalf of the students that USSA represents, and the students that COPUS represents, but particularly on behalf of the working men and women who, when they graduated from high school, were unable to go to college, and who now seek, with low-incomes and family responsibilities, to improve their career and lives through a college education; the Vietnam veteran who is struggling to reintegrate himself back into society through improved educational opportunities; the widowed and divorced mothers attempting to cope with the awesome reponsibilities of both raising a family and going to school so they can gain the skills they need to enter the work force; the persons working full-time who face unemployment and are attempting to upgrade their skills; and the traditional age college student who either

page eight

has no parents or who has parents financially incapable of supporting him or her. I pledge the full support of my organization to the efforts of this Subcommittee to implement in FY 79 the improvements for financially independent students. We all owe you a great debt for the successful struggle to pass MISAA last session. I hope that we can soon have another reason for rejoicing. Thank you again for the opportunity to be here today.

NOTES

1) Hearing before the Subcommittee on Postsecondary Education of the Committee on Education and Labor, House of Representatives, Ninety-Fifth Congress, First Session on the Basic Educational Opportunity Grants Program 1978-79 Family Contributions Schedule, September 12, 1977, p.16.
2) Ibid. p. 77.
3) Ibid. p. 124.
4) All quotes mentioned from the OE memo are from an unpublished Dec. 14, 1977 memo to the Commissioner of Education from the Acting Director, Division of Policy and Program Development, BSFA, through the Deputy Commissioner, BSFA.
5) Statement of Joseph Califano, Jr.Secretary of the Department of Health, Education, and Welfare. HEW News, Feb. 8, 1978. Published in Hearings before the Subcommittee on Postsecondary Education of the Committee on Education and Labor, House of Representatives, Ninety-Fifth Congress, Second Session on HR 10854. Hearings held Feb. 9, 16, 22, and 23, 1978, p.303.
6) Testimony of Secretary Joseph A. Califano,Jr. Department of Health, Education, and Welfare before a Joint Hearing of the Senate Committee on Human Resources and the House Committee on Education and Labor, Feb. 9, 1978. Published in Ibid.,p. 313.
7) Statement by Hon. Ernest L. Boyer, U.S. Commissioner of Education, Office of Education, Department of Health, Education, and Welfare, published in Ibid., p. 206.
8) Federal Register, Vol. 43, No. 157, Monday August 14, 1978, p. 35967.

STATEMENT

OF THE

NATIONAL ASSOCIATION OF STUDENT FINANCIAL AID ADMINISTRATORS

BEFORE THE

SUBCOMMITTEE ON EDUCATION, ARTS & HUMANITIES

UNITED STATES SENATE

April 6, 1979

Presented by:

Dr. Dallas Martin

Executive Director

Mr. Chairman and Members of the Subcommittee:

It is a pleasure to appear before you today. However, I must admit that the members of our Association are very disappointed that the Administration has chosen to ignore certain legislative provisions of the Middle-Income Student Assistance Act, which in turn has necessitated this hearing. Nevertheless, we commend you, Mr. Chairman, and the members of this Subcommittee for taking affirmative steps to correct this situation and we pledge our complete support to ensure that the "independent" student provisions of MISAA are enacted, as promised, during the 1979-80 academic year.

The current inequity within the Basic Grant program as it relates to the treatment of independent students is not a new issue to the postsecondary education community, the members of Congress, or the Administration. The record shows that in hearings before the House Subcommittee on Postsecondary Education on September 12, 1977, and before this Subcommittee on September 21, 1977, I testified on behalf of the major higher education associations regarding the inequitable treatment of independent students in the Office of Education's Notice of Proposed Rulemaking governing the 1978-79 Basic Grant family contribution schedules.

Earlier that same year, Commissioner Ernest Boyer testified before the same authorizing subcommittees and expressed similar concern about the existing student aid programs in light of the changing demographic characteristics of college students then as compared to those of ten years ago. He stated his belief that "the family contribution schedules should demonstrate common sense and flexibility and, in so doing, reflect the needs of our growing independent population."

Further, at those hearings on the 1978-79 family contribution schedules Leo Kornfeld, Deputy Commissioner of the Bureau of Student Financial Assistance, indicated the Office of Education would review carefully the definition and treatment of independent students in order to make necessary modifications in the 1978-79 schedules.

Following those hearings, on February 8, 1978, President Carter announced a $1.46 billion student aid package designed to help middle-income families and others meet rising college costs. You, Mr. Chairman, and Senator Williams and others were recognized that day by President Carter for your work in developing this legislative package and it appeared that a full governmental partnership had developed with the Executive Branch and both houses of Congress united in purpose and commitment. The same day, Congressman William D. Ford and 24 co-sponsors from both sides of the aisle introduced the Administration's bill, H.R. 10854 in the House. On February 9, a joint hearing was held in the Senate in which Secretary of HEW Joseph Califano, Commissioner Ernest Boyer, and Assistant Secretary of Planning and Evaluation Michael O'Keefe outlined the features of the President's proposal.

It is interesting to note, Mr. Chairman, that on Page 3 of the President's original bill (H.R. 10854), starting on line 13, the following is found:

> (d) Section 411(a)(3)(C) of the Act is amended by adding at the end thereof the following:
>
> In addition, such regulations shall--
>
> (i) provide that the portion of assets which shall be exempt from assessment for contribution for an independent student who has one or more dependents shall be the same as the portion so exempt for the family of a dependent student;
>
> (ii) provide that the rate of assessment for contribution on that portion of assets of such an independ-

ent student which is not under subdivision (i) shall be the same as the rate applied to the comparable portion of assets of the family of a dependent student; and

(iii) in establishing a portion of effective family income which shall be exempt from assessment for contribution by reason of subsistence requirements of independent students who have no dependents, use the same method for computation of such portion for such students as is used for dependent students and for independent students who have dependents.

Due to a large degree to your support in the Senate, Mr. Chairman, this exact language was included in the final bill which was adopted by the Congress on October 14, 1978 and signed into law by the President on November 1, 1978.

At no time during the debate on this measure did any representative from the Administration oppose or even question the aforementioned provisions which affect the treatment of independent students. To the contrary, on September 28, 1978, in testimony before this Subcommittee Deputy Commissioner Leo Kornfeld, Director of the Division of Policy and Program Development Peter Voigt, and Deputy Assistant Secretary for Legislation William Blakely, stated that the family contribution schedules for 1979-80 would change the method of determining the family size offset for the single independent student and would change the asset treatment for independent students with dependents. This portion of their testimony clearly documented the logic and reason for these changes and was applauded by all of us who felt the change was long overdue.

Following the approval of the 1979-80 family contribution schedules, the passage of the FY-79 Labor-HEW Appropriations Bill, and the President's signing of the Middle-Income Student Assistance Act (MISAA) on November 1, institutions of postsecondary education, representatives

47-552 O - 79 - 4

from HEW and even members of Congress, began to tell the American public that more student aid would be available in FY-79 as a result of these actions.

In fact, it was not until well after the President's FY-80 budget proposal was announced that any hint was given by the Administration that the "independent student" provisions of MISAA would be deferred until the 1980-81 academic year.

Upon hearing this decision, those of us in the higher education community initially thought there simply was some confusion over the provision contained in the FY-79 HEW-Labor Appropriations Bill and the final provisions in MISAA. Several of us conferred with staff from the authorizing and appropriations committees and learned that the original intent of the language contained in Public Law 95-480 (the FY-79 Labor-HEW Appropriations Bill) was included simply to protect those students who already were eligible for financial assistance prior to the passage of MISAA (Public Law 95-566) in the event the FY-79 Basic Grant appropriation was not sufficient to fund all students. However, upon further investigation, the members of the House and Senate Labor-HEW Appropriations Subcommittee discovered that as much as $700 million in BEOG carry-over funds may be available this year and that there is more than ample funding to fully implement all the provisions contained in the Middle-Income Student Assistance Act.

A description of the appropriations and authorizing committees' interpretation of the provisions and a statement of their desire for corrective action subsequently was sent to the Secretary of HEW on February 2, 1979, by several members of both committees. Unfortunately, it now appears that there was no confusion on the Administration's part

regarding the provisions of the two public laws. Rather a deliberate decision was made by the Office of Management and Budget to simply ignore the law in what they call "a need for fiscal constraint."

Proof of this action on their part can be found in the Basic Grant family contribution schedules published in the March 23, 1979, Federal Register. In the General Background section, on Page 17898, the following statement appears:

> This law specified a 10½% rate for assessing parental discretionary income and made two changes in the treatment of independent students. One of these changes required that the family size offset for the single independent student would be computed in the same way that all other family size offsets are computed. The other provided that the assets of independent students with dependents would be assessed in the same manner as those of the parents of dependent students.
>
> However, it was decided to postpone implementation of these two changes in the treatment of independent students until the 1980-81 award period, because of the need for fiscal constraint with respect to FY 1980 outlays. Accordingly, these two changes are not included in the 1979-80 Family Contribution Schedules.

From this statement we can only conclude that certain parties within the Administration have decided to make their own decisions, regardless of Congressional intent, the provisions contained within the law, or the promises made by the President. While such action clearly could be judged illegal, in NASFAA's opinion it is a moral issue. A commitment made to more than 70,000 independent students who currently are not eligible for the program and to 612,000 who anticipated increased awards by their government, signed into law by their President, and advertised in good faith by personnel from postsecondary educational institutions, has been broken.

Therefore, Mr. Chairman, NASFAA urges you, the members of this Subcommittee, and your colleagues in Congress to use your authority to

disapprove the regulations submitted to Congress on March 16, 1979, which proposed to amend Title 45 of the Code of Federal Regulations, Section 190, subparts C and D, with respect to the family contribution schedules for use during the 1979-80 award period under the Basic Educational Opportunity Grant Program of the Higher Education Act of 1965, Title IV, part A(1).

In making this recommendation to you, NASFAA members fully realize that accurate Basic Grant award announcements to deserving students will be unnecessarily delayed due to the failure of the Administration to submit final family contribution schedules reflecting the provisions of the law. However, we have reviewed our recommendation carefully in light of this impact and have concurred with the affected parties. We all agree that the Administration's decision to deny authorized assistance to a significant portion of our most needy students cannot be tolerated.

In the meantime, our members have been instructed to proceed with their internal student aid packaging operations and to use the results being produced on the Student Eligibility Reports. However, since the Bureau of Student Financial Assistance currently produces an alternate student eligibility index on each SER which accurately reflects the MISAA calculation for independent students, we will notify these students of the differences in their awards and explain to them that based upon an OMB decision, their 1979-80 Basic Grant award has been reduced or denied. I am certain, Mr. Chairman, that you, the other members of Congress, and the Administration will hear more from these taxpaying citizens in the next few months unless all of the Middle-Income Student Assistance Act provisions are adhered to by HEW.

Thank you, Mr. Chairman, and Members of the Subcommittee, for providing the opportunity to have this issue fully addressed. I would be happy to answer any questions you may have at this time.

STATEMENT

OF THE

NATIONAL ASSOCIATION OF INDEPENDENT COLLEGES AND UNIVERSITIES

BEFORE THE

SUBCOMMITTEE ON EDUCATION, ARTS AND THE HUMANITIES

COMMITTEE ON LABOR AND HUMAN RESOURCES

U.S. SENATE

April 6, 1979

Presented By:

Dr. John D. Phillips

President

Mr. Chairman and Members of the Subcommittee:

I am happy to be here this morning, to supplement the very good comments provided by Dallas Martin, Joel Packer, and Jerry Roschwalb. What follows is the testimony I had planned to give this morning, before I learned that the Administration had relented and decided, after all, to follow the law of the land and implement the provisions concerning independent students which were written into law largely as the result of leadership exerted by the Chairman and Members of this Subcommittee in 1978.

Even though the circumstances have changed dramatically in the last few days, I think it is important to deliver the comments I originally had planned, if only to indicate for the record the seriousness of the situation which would have obtained if the Administration had failed to relent from its stated intention to ignore the law of the land.

- - - - - - - - -

As a matter of historical perspective, I believe it is important to recall the statements made by Mr. Leo Kornfeld, on behalf of the Administration, on September 28, 1978. On that date, Mr. Kornfeld indicated that the Administration was willing to accept and implement the provisions concerning independent students which were contained in the pending student aid legislation only if the Congress would settle for a maximum assessment rate of 12 percent, instead of 10.5 percent, on family discretionary income. In support of this proposed compromise solution of the issues related to the Basic Grants Family Contribution Schedules, Mr. Kornfeld indicated that the carry-over funds available to help finance the expanded Basic Grants program would not exceed $300 million, and therefore, that insufficient funds would be available to finance both the provisions concerning treatment of independent students and the 10.5 percent income-assessment rate.

At the time, virtually all of the higher education associations questioned Mr. Kornfeld's figure of $300 million, noting the enormous confusions and disruptions of the Basic Grants program which had been created by the new validation requirements imposed on the institutions, and suggesting that the carry-over was likely to be at least $400 million, and probably more like $500 million. However, in the key deliberations of the Senate Labor/HEW Appropriations Subcommittee on October 5, Mr. Kornfeld again repeated his official estimate of $300 million as the carry-over factor, and as far as I can tell, it was this factor, and this factor alone, which prompted the Committee to insert the limitation language concerning treatment of independent students into the appropriations bill. To my knowledge, at no time did the Committee express a desire to limit equitable treatment of independent students, and if Mr. Kornfeld had accepted our unofficial estimates of a $400-to-$500 million carry-over, I am confident that the Committee would not have included the limitation language in its bill. Thus, the language was not prompted by any Congressional policy commitment to treat independent students inequitably, but rather by Mr. Kornfeld's report that insufficient carry-over funds would be available to implement that part of the pending student aid legislation and also implement the 10.5 percent income-assessment rate.

Now that we know the actual carry-over figure will be somewhere in the range of $500-to-$700 million, it is clear that we can afford to carry out both the independent student provisions and the 10.5 percent income-assessment rate, and it should be equally clear that implementing both provisions of the student aid legislation was and is the true intent of the Congress.

Furthermore, regardless of the technical conflict between the language of the authorizing and appropriations statutes, there is an overriding question of

fundamental integrity involved here. The student aid legislation was formulated and promoted by the Administration and the leadership of the Congressional education committees as a preferable alternative to the tuition tax credit legislation which also was pending in the 95th Congress. Equitable treatment of independent students was part and parcel of the Administration's legislative initiative, and it also was one of the arguments used by the Administration to secure Congressional support of the student aid legislation in preference to the tax credit legislation.

The Administration's strategy was successful. The student aid legislation was enacted. The tuition tax credit legislation was not. Many who were involved in that legislative fight warned that the student aid legislation could turn out to be a sow, and that the Administration might fail, in the final analysis, to support the full range of benefits provided in that legislation; whereas the tuition tax credit alternative would not be subject to this kind of administrative miscreance. The higher education associations accepted the Administration's protestations that such events would not occur, and on the basis of those assurances we fought shoulder-to-shoulder with the Administration to secure enactment of the student aid legislation.

Now the question is whether or not our confidence was justified, and whether or not the Administration is to remain credible in the eyes not only of the Congress and the higher education community, but more importantly, in the eyes of the millions of students and parents in low- and middle-income circumstances who also accepted the Administration's assurances and believed that the student aid legislation really would provide the benefits it portended.

- - - - - - - -

Therefore, if the Administration had not relented, and had not finally agreed to implement the provisions of the student aid legislation concerning

equitable treatment of independent students, I for one surely would have encouraged this Subcommittee, and the entire Congress, to exercise the statutory option of rejecting the entire Family Contribution Schedule for the Basic Grants program, employing the powers set forth in Section 431(b) of the Higher Education Act.

Let us be grateful that the need for exercising this options seems to have been removed. But let us also be continually vigilant and wary of future propensities for the Administration to neglect its commitments, and even, as it were, to neglect the law of the land -- a law which we all have struggled so hard to make responsive to the real needs of students and parents througout this country.

Thank you very much for receiving my comments. I would be happy to answer any questions which you may have for me.

NATIONAL ASSOCIATION
OF STATE UNIVERSITIES
AND LAND-GRANT COLLEGES

One Dupont Circle, Washington, D. C. 20036 202 293-7120

April 9, 1979

Ms. Jean Frolicher
Professional Staff Member
Subcommittee on Education, Arts and the
Humanities
Committee on Human Resources
United States Senate
4228 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Jean:

We are accepting the invitation you extended to us last Friday to submit additional remarks for the record beyond the formal testimony already submitted.

The attached statement is what we might have said in public discussion had there been a need for an extended hearing. I think it may be useful for the record to reflect these ideas. Unlike the document submitted for the record that has been approved by the officials of the twelve associations listed on the front page, these comments are submitted in behalf of NASULGC alone.

Sincerely yours,

Jerold Roschwalb
Director of Governmental Relations

Attachment

Mr. Chairman and members of the subcommittee:

Last week you graciously extended to us an invitation to appear before you to state our views regarding the Administration's quite incredible decision to violate the law and withhold funds appropriated by the Congress for the BEOG program to extend greater equity to independent students.

We have prepared formal testimony describing our understanding of the historical background of the development of the legislation enacted last year, initiated, we all recall, by the introduction for consideration by the Senate of the Chairman's College Opportunity Act of 1978. In essence, our testimony says: The Congress passed the law. The Administration publically says it will ignore it. The Administration cannot distribute any BEOG funds if Congress disapproves the Administration's family contribution schedule. Therefore, we urge you to reject the Administration's schedule until such time as it is corrected to conform with the law.

Mr. Chairman, today we hear much about the problems of college graduates finding jobs in their chosen fields. That might be described as a problem of training. There is another problem and that has to do with education, something many of us are old enough to have experienced in our college years. One of the things we were taught was to detect logical fallacies. Post hoc ergo propter hoc, "after the event then because of it," was one illogical sin we came to recognize at sight. Too bad. We would have liked to believe that the persons in the Administration responsible for this conflict, having heard that higher education associations were to appear before you, bethought themselves of their errant ways and bowed to the force of the law -- agreeing as they did yesterday to fund independent students as the law demands. We do believe that One Dupont Circle and environs, where higher education associations multiply -- and on some issues divide -- has become a locale where federal relations has markedly improved in the past several years -- better able to respond to the needs of legislators involved in authorizing legislation for college and university programs of student assistance, research, and more. But we know that the Administration folded because

even at OMB reason said that the Congress -- the Education Subcommittees of both Houses -- would call their bluff. So they quit a losing battle. For taking the firm stand you did, we offer our thanks and congratulations.

We can now say, very well. It's won. Now back to business. We respectfully submit that while this incident may soon be closed, the irreducible issue it represents is very much open and with us. All of us can recite horror stories of overregulation and we are aware of a succession of Presidents and their commissions and their Secretaries of HEW all of whom proclaimed wars against overregulation. Because of the time now devoted to the business of regulation within the federal government and by the regulated among the citizenry and to an increasing degree, we sense, by the Congress itself, we take note now of the need for a more intense analysis of the "mindset" behind the event now apparently resolved.

We regret that it appears necessary that Congress cannot fulfill its obligations as a legislative body unless it takes on a greater responsibility to act as a policeman in its oversight responsibility to make certain that the laws it enacts are not bent out of shape in the regulatory process or wholly disregarded as the Administration apparently intended to do until Congress used its appropriate authority this past week.

The "mindset" we are referring to is sometimes described as "brown shirt mentality." In fact, we first heard that description from a highly respected USOE administrator some years ago, who, at a public meeting noted that he was aware of two states that were flagrantly violating the law of Section 1202 of the Higher Education Act. When asked why he did not go into the states and see that the law was followed, his response was "I can't because there are no regulations for Section 1202." That USOE official has since left the government, has been properly deprogrammed, and is now a respected official of a higher education association. What his statement, made in all good faith, indicated was that within the winding entrails of federal agencies there has

developed an increasing belief that the law as written is only a point of departure. The Congress calls for public witnesses to offer guidance, advice, and comments and then determines which part of that guidance it will choose to follow. The regulators treat the law just as Congress treats testimony. If Congress did not take care of the problem that should have been taken care of, the regulators will do so in their regulations. If Congress did something that the regulators believe goes too far in some direction, the regulators in their regulations will curb it. Moreover, it matters very little if the regulations can be adhered to by those who will be regulated, whether they, in fact, may be impossible to adhere to as is increasingly the case. And who are these regulators? To whom are they responsible? To whom are they accountable?

Jan Smuts once was quoted as saying that at the turn of the century that "Paris will not work because it lacks human dimension." In retrospect, that is an idea hard to believe, but when applied to the workings of the federal government today it contains part of our explanation. On any given day, the numbers of committees in the Congress holding hearings or mark-ups of legislation that affect directly and indirectly the basic concerns of higher education may number in the dozens. The complexity of our society has positive attributes, but it may lack human dimension. That human dimension was called upon this past week when subcommittees in the Congress informed the Administration that they would be punished if they misbehaved and that the world at-large would know about that misbehavior. It is regrettable that this incident took place, but it is only one incident in a whole series of events, certainly not restricted to the concerns of higher education.

We do much importuning before this subcommittee because of its extraordinary responsiveness, manifested by the record of the past decade of major legislation that has truly made possible access to postsecondary education by enormously increased numbers of citizens. We, therefore, regret to ask you to perform still one more

task, that of intense oversight of the laws within your jurisdiction, to make certain that lack of attention does not open the way to legislation by regulation or inaction by the federal agencies.

We thank you for your continued support and the opportunity to present these observations to you.

TESTIMONY

to the

SUBCOMMITTEE ON EDUCATION, ARTS AND THE HUMANITIES

COMMITTEE ON HUMAN RESOURCES

UNITED STATES SENATE

April 6, 1979

by

American Association of Community and Junior Colleges
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Association of Catholic Colleges and Universities
Association of Community College Trustees
Association of Jesuit Colleges and Universities
Council for the Advancement of Small Colleges
National Association for Equal Opportunity in Higher Education
National Association of Independent Colleges and Universities
National Association of Schools and Colleges of the United Methodist Church
National Association of State Universities and Land-Grant Colleges

Presented by

Jerold Roschwalb
Director
Office of Governmental Relations/Higher Education
National Association of State Universities and Land-Grant Colleges

From the Acceptance Speech by Governor Jimmy Carter, at the Democratic National Convention, New York City, Thursday, July 15, 1976:

"The test of any government is not how popular it is with the powerful, but how honestly and fairly it deals with the many who must depend on it."

"It is time for the law to be enforced. We cannot educate children, create harmony among our people, or preserve basic human freedom unless we have an orderly society."

"It is time for our government leaders to respect the law no less than the humblest citizen, so that we can end the double standard of justice in America."

Mr. Chairman and members of the Subcommittee, the witnesses appearing before you frequently and accurately note that it is a privilege, honor, and pleasure to have the opportunity of setting forth the views of the organizations they represent on the issue of the day. I am here, today, representing the associations listed on the cover sheet of this testimony and it is, indeed, a privilege and honor to appear before you. However, the nature of the issue detracts profoundly from the pleasure of this hearing. In our view, we are faced, quite incomprehensibly, by an Administration that has determined, solely for budgetary reasons, to refuse to implement an Act passed by the Congress last year, and signed into law by the President on November 1, 1978. Although the amount of funds involved is relatively small, $130 million in a $2.6 billion FY'79 appropriation for the BEOG program, and the issue at first blush may appear to be insignificant, we do believe that it points to something much greater: the danger of a government objectively selecting which of the laws of the land it will enforce or not enforce subject to fiscal or other standards it sets at any given time. We ask with great concern: if the Administration is to be permitted to violate this law and determine whether or not it will fund programs solely because of budgetary pressures in FY'79, what is there to prevent the Administration

from assuming it has the right to make similar determinations next year when budget pressures may be as great or greater and choose other programs that it will not fund, again solely in the interest of fiscal restraint?

The background facts in this matter now are considered stipulated. When Congress enacted the Basic Education Opportunity Grant program in 1972, it determined that independent students would be treated differently with regard to determining what portion of their assets and their discretionary income were to be appropriately taxed for their educational expenses before the students were to be eligible for grant funds. At that time, it was not clear precisely who was being thought of when the term "independent student" was used. There was concern that inordinate numbers of students would leave their parental homes to have themselves declared "independent," thereby, legally if unethically, taking advantage of the new grant program.

Subsequently, it has been shown that the overwhelming majority of independent students are not the traditional 18 to 20 year old college students. Independent students frequently are displaced homemakers--widows or divorcees responsible for their own income and often for supporting their children. Others are Vietnam veterans. A substantial number are persons, who when they were 18 years old and might have attended institutions of higher education, found that their financial situation prohibited them from going to college, since at that time there were few or no federal or other student financial assistance programs. Inadvertently, perhaps, the inequitable treatment of independent students proved to be sexist, discriminating against women as well as against older students. The Chairman and members of this subcommittee have long been champions of the disadvantaged and know these facts.

When Congress reauthorized the Higher Education Act in 1976, it did not resolve this situation, but already it was an issue before the public for discussion, with increasing concern being raised in many quarters including

the Congress that the law be modified to create greater equity for the independent student. Three areas called for rectification: (a) the budget, how much independent students were permitted compared to dependent students, (b) the treatment of assets, including what percentage was to be taxable and what the rate of taxation should be and (c) the percentage of discretionary income the country expected independent students to contribute toward their education.

In early 1978, it was another matter of equity that turned the Congress' attention towards new legislation, that involving middle-income students. The Chairman of this subcommittee introduced the first bill, the College Opportunity Act of 1978. The appropriateness of legislation to alleviate the education burden on middle-income families was agreed to by the education committee leaders of the Congress, representatives of the Administration, and the higher education community, represented generally by Washington-based, association officials. From the outset, it was understood and agreed to by all parties that in this middle income student assistance legislation, enacted in the last weeks of the Congress, now referred to as the MISAA bill, the problem of equity for the independent student also would be addressed. Proposals to create ideally equitable circumstances proved quite costly. The Administration established $1.46 billion as the limit for increased funding for FY'79 for the new legislation, and the various computer runs conducted in the Office of Education and elsewhere showed a need for sharp modifications to proposals for nearly identical treatment of dependent and independent students. The compromises agreed to are now in the law as embodied by MISAA (P.L. 95-566). It was understood that they would cost approximately $130 million for FY'79 when they were introduced into the law and when it was enacted.

We are now engaged in the beginning of a new legislative period with the Congress working on reauthorization of the Higher Education Act. While

the Congress has righted the situation of independent students with dependents in important ways, we hope that this Subcommittee will address what we believe to be a situation still lacking in full equity for all independent students.

In sum, it was this legislation, MISAA, agreed upon by all parties, that was fought for by student organizations representing the independent student and all higher education associations. Congressional leaders in the education committees fought unremittingly and under enormous pressures of time, and they were aided, particularly in the last days of the 95th Congress, by an all-out effort of the White House using presidential influence to bring the MISAA legislation to the floor and ultimately to enactment. On November 1, 1978, President Carter signed the MISAA bill into law at the White House in the presence of scores of representatives of the Congress, the Administration, the education associations and individual institutions of higher education. The President, quite appropriately, hailed the Act as landmark legislation that would provide opportunities to whole new categories of students desperately needing financial assistance in order to gain access to higher education opportunities. There were no qualifications mentioned by the President nor by any other official of the Administration. No one suggested that the bill was superb except for the provisions dealing with the independent student.

Across the country, thousands of students acknowledged the capacity for the "system" to work in achieving equity for its citizens in correcting misconceptions or misimpressions even as they were aware that the entire problem had not yet been resolved. Financial student advisers at institutions appropriately began to inform their clientele of the changes in the law, in anticipation of their being able to offer greater assistance to additional

numbers of financially hard pressed students. At no point in the process did any one doubt that extending the eligibility to more participants in the BEOG program or expanding the amount previously eligible students would be entitled to would fail to cost funds. That was what the entire legislation was about in the first place, especially in the context of other legislation being promoted in the Congress at that time to aid middle-income families also with tax funds in a manner that most higher education officials believed less advisable from the prospective of public policy. The Administration concurred in those views.

In this entire development of events there was only one minor "glitch." The Senate had added language to the appropriations bill for FY'79 requiring that payment in the BEOGs program to independent students follow the standards for the previous year. It was not because of the desire to save the $130 million involved nor the desire to perpetuate inequitable treatment of independent students that lay behind this. Rather, it was the still uncertain situation of the legislation in the middle of 1978 that gave the Appropriations Committee some pause. It was after the passage of the appropriations bill, that MISAA came to the floors of the Congress for enactment where the changes in the treatment of the independent students were wholly supported. It was conscious and deliberate on the part of the Congress that the new law would establish new payment schedule requirements for independent students.

For its part, the Administration held to the agreed upon position. On August 14, the first documents proposing the new family contribution schedule for BEOGs was published and contained changes in the schedule consistent with the objectives of the Middle Income Student Assistance legislation before the Congress. In fact, as late as November, 1978, documents produced in the Department of HEW indicated every intention of funding the independent student

as called for in the law. Shortly thereafter, however, perhaps because of peculiar forms of reasoning prevailing at the Office of Management and Budget, a decision was made somewhere in the Administration to continue funding independent students according to the previous year's standards, in short, to postpone the implementation of MISAA with regard to independent students for one year.

There were reports out of HEW and in correspondence with the Commissioner of Education that indicated that the decision was based on some tortured legal legerdemain in which HEW's General Counsel's Office had succeeded in convincing itself, and itself only, that because of language that appeared in the appropriations bill, HEW was not required to follow the contribution schedule required by MISAA. This at least reflected the Administration's transient recognition that it needed some form of argument, however tenuous or specious, to maintain a position that violated the meaning of the law. Responding to this abuse of reason and long established legal standards of legislative interpretation, seven senior members of education authorization and appropriations committees in the House and Senate, including the Chairman of this Subcommittee and the Chairman and ranking minority member of the Senate Appropriations Subcommittee, wrote to Secretary Califano and stated clearly and without reservation that the intent of Congress was that independent students be funded according to the law as stated in the Middle Income Student Assistance Act.

Since then, the Administration has dropped its facade of legal casuistry and has agreed, quite incredibly, that the only reason HEW was not obeying the law was budgetary. In testimony before the House Subcommittee on Postsecondary Education on March 20, HEW's Secretary Califano, with remarkable candor, agreed to that. In brief, the Administration has succumbed to flagrant lawlessness with cool casualness

accepting the meaning of the law as everyone else now does, but choosing to ignore it.

> From the Acceptance Speech of Senator Walter F. Mondale, Democratic Candidate for Vice President of the United States, July 15, 1976:
>
> "Franklin Roosevelt said, 'the test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little.'"
>
> "We pledge to restore government that tells the truth and obeys the law. Roosevelt once said that the Presidency is 'preeminently a place of moral leadership.'"

Mr. Chairman and members of the Subcommittee, it is entirely possible that in the welter of crises that confront the President, Vice President, and key officials of the Administration, they have yet to grasp a clear understanding of the level of anger that has been generated within the higher education community in the country by this behavior. It may be that this decision was determined by some low level bureaucrats in OMB who can only understand the positive aspects of reducing budgetary expenditures, but who fail to understand the irreducibility of a government's abiding by the law.

We are concerned about one unstated but implicit element in the Administration's embarrassing behavior. The position of the Administration in this affair appears to be enhanced only by its possible dependence on its capacity to blackmail--there is no other word--Congress in allowing it to violate the law. It is known to all concerned that the annual family contribution schedule must be published and approved and distributed to institutions across the country in time so that students may be informed on what their

grants may be, that funds may be distributed accordingly, and institutions may proceed to package assistance of grant, work, and loans to students. It may be that the Administration is depending on its being able to compel the Congress to allow it to violate the law so that literally millions of students are not injured by the Congress' insistence that the law be followed. If this is a basis for the Administration's obdurate refusal to respond positively to the law then it is more dangerous than its original lawlessness in refusing to do what the law says it must do.

If we in the higher education associations are profoundly disheartened by this chain of events, it is in part because we worked jointly with the Administration in support of the congressional effort to enact MISAA. We imagine that the Congress as well feels bewildered and perhaps betrayed by the Administration's position. The history of the development of the legislation and what the Administration supported from the start and what we all worked for jointly and finally achieved is clear; there is nothing ambiguous about it. The law says what the law says. It does not matter if there are those in higher education associations who believe that the law does not go far enough in achieving equity or if in the perspective of the denizens of OMB the law goes too far. It says what it says, and only the Congress of the United States is authorized by the Constitution of the United States to determine what the law should state. If the law is erroneous in its goals, then the Administration has the responsibility to turn to the Congress and request modification of the law. If the Congress should deem such modifications in order it will act accordingly; until such time the law remains the law.

Few of us fail to recall the atmosphere pervading this country only a few years ago, because an Administration in office believed it could choose

among the laws of the land in determining which it would follow and which it would violate. Previous Administrations have tried their hands at refusing to request funds for appropriations for other student aid programs in which minimal levels for funding are set in the law. To its credit the Congress has consistently rejected such requests and the illogic accompanying them and funded the programs beyond the minimal levels required by law, making it possible to achieve the goals intended by the Congress when those laws were enacted. We hope this Congress will respond in kind.

We admit to this committee, responsible for higher education legislation, that we are extremely worried over the rapid passage of time to that day when it will be imperative that the family contribution schedule is in the hands of institutional officials so that orderly distribution of federal funds may take place. We realize that if the Congress uses the authority it never has had the need to use and formally rejects the proposed family contribution schedule proposed by the Department of HEW, it could enable HEW to precipitate a crisis in the program. But we emphasize that it is clear to all of us that the crisis will have been generated by HEW and not by the Congress. Despite these concerns there is a common view among associations of institutions, officials who head the institutions themselves, officials at institutions who advise and assist students in securing federal student aid to which they are entitled, and the students themselves. Some of these groups are represented here today to speak for themselves, and I believe to concur in our belief that the Congress must stand fast and insist on the law's implementation. The consequences of not doing so are more serious than any problem that could result in a brief delay in the publication of the family contribution schedule.

All of us are too familiar with battles that have raged in the past years in the hearing rooms of the Congress, and regrettably, in the courts,

costing funds that would be better devoted to educational activities than legal battles over federal agencies' penchant for rewriting the laws it feels the Congress has inadequately drafted through the creative use of the regulatory process. While that practice is a serious imposition on the democratic process it at least stays within the legal bounds of the system. This time the Administration is off on a complete frolic. It is not rewriting the law, rather it is acknowledging it, and flaunting its indifference to it. We believe that the Congress should not ignore this.

It is unwise to be alarmist and conjecture the worst case. But it would be foolhardy not to be concerned, given the past decade's history, whether an Administration that finds that by prudent timing it can evade those laws it would rather not implement will, in the following year, ignore other laws. For example, this Administration wishes the social security law changed as it affects educational benefits. Ultimately, the Congress may choose to do so. At the moment, congressional committees have indicated they are dubious over responding to the immedicate call for changes by the Administration. But in FY'80 or FY'81, once again for budgetary purposes, the Administration may choose to save funds by ignoring that law. Only if the Congress stands fast on this issue can it hope to save the Administration from itself.

We thank the committee for the opportunity to present the views of the higher education associations. I would be pleased to try to respond to questions of members of the Subcommittee.

From the Announcement Speech of Governor Jimmy Carter to the National Press Club, Presidential Campaign, December 12, 1974:

"Our people are understandably concerned about this lack of competence and integrity. The root of the problem is not so much that our people have lost confidence in government, but that government has demonstrated time and again its lack of confidence in the people."

"To begin with the confidence of people in our own government must be restored. But too many officials do not deserve that confidence."

"There is a simple and effective way for public officials to regain public trust — be trustworthy!"

"All our citizens must know that they will be treated fairly."

"Every American has a right to expect that laws be administered in an evenhanded manner..."

Senator PELL. The hearing stands adjourned.

[Whereupon, at 10:15 a.m., the subcommittee adjourned, subject to the call of the Chair.]